

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	

**COMMENTS OF  
USTELECOM – THE BROADBAND ASSOCIATION**

**I. INTRODUCTION AND SUMMARY**

USTelecom — The Broadband Association (USTelecom)<sup>1</sup> submits these comments in response to the Wireline Competition Bureau’s (Bureau) Public Notice (Notice) seeking comment on “approaches to identify and resolve apparent discrepancies between the number of model-funded locations that Phase II auction support recipients are expected to serve (funded locations) and the actual number of locations that support recipients can serve (actual locations).”<sup>2</sup>

USTelecom identified early in the process that the number of locations modeled for support in the Connect America Fund (CAF) Phase II auction may not actually exist in the real world<sup>3</sup> and therefore supports the Bureau’s effort to develop a sound approach to dealing with this potential issue.

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Location Discrepancies in Eligible Census Blocks within Winning Bid Areas*, WC Docket No. 10-90, Public Notice, DA 18-929 (WCB Sept. 10, 2018).

<sup>3</sup> *See* Letter from Jonathan Banks, Senior Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Auction 903 (filed Jan. 19, 2018) (“[Discussing] the potentially substantial gap between the location commitments identified by the CAM (and included in the Eligible Areas PN) and the number of locations that may actually exist on the ground in the CAF Auction eligible CBGs.”).

## II. SUBMITTING, CHALLENGING AND ADJUDICATING EVIDENCE

### A. Prospective Locations Should Not Count as Actual Locations

The Commission's existing definition of an "actual location" continues to suffice and should not be extended to include prospective locations. The Commission has already detailed its rationale that "a CAM location is a residential housing unit or small business served with mass market services"<sup>4</sup> with the caveat that "a location need not be occupied when being reported as a served location, but it cannot be abandoned, derelict, condemned, or otherwise uninhabitable."<sup>5</sup> Altering the definition now would create disunity amongst the CAF programs with little-to-no discernable public policy benefit.

There is a substantial difference, however, between "not occupied" and "not finished," and there are too many unknowns with unfinished locations to consider them as part of the CAF program. The Notice seeks comment on "whether actual locations should include prospective developments that have a reasonable certainty of coming into existence within the support term."<sup>6</sup> As any long-time visitor to "The Bullpen" outside of Nationals Park can attest,<sup>7</sup> even with a 10-year horizon,<sup>8</sup> there is little "reasonable certainty" in real estate development, with neither planning nor the start of construction guaranteeing that the project will be completed. Requiring a provider to gamble on the completion of projects or risk being

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<sup>4</sup> Notice at para. 8.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at para. 9.

<sup>7</sup> Scott Allen, *What's Next for The Bullpen, the Beloved Nats Park Destination? Not Even the Owner is Sure*, Wash. Post, (Sept. 28, 2017) available at [https://www.washingtonpost.com/news/dc-sports-bog/wp/2017/09/28/whats-next-for-the-bullpen-the-beloved-nats-park-destination-not-even-the-owner-is-sure/?utm\\_term=.f09c4ef03832](https://www.washingtonpost.com/news/dc-sports-bog/wp/2017/09/28/whats-next-for-the-bullpen-the-beloved-nats-park-destination-not-even-the-owner-is-sure/?utm_term=.f09c4ef03832) ("Not in a million years did I think we'd still be there," Blair said this month. "Not in a million years. I thought we'd get maybe three or four years out of it and they'd start developing the space, but it just all worked out, fortunately for us, that we're still there."").

<sup>8</sup> While the Notice speaks in terms of the "10-year support term" when weighing the benefits of prospective locations, it is important to note that any provider's broadband deployment obligation must be met within six years. Compare Notice at para. 9 with *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5964, para. 40 (2016).

out of compliance (i.e., falling short on total locations deployed because the prospective locations never materialized) is an unfair burden completely outside of the provider's control. There is no standardized means—either with real estate developers or local governments—for a provider to reasonably ascertain future developments and it should not be responsible for doing so. Providers cannot be omnipresent in local real estate planning over the next year and auditing whether a provider could have, or should have, known about a prospective development would be extremely subjective. Any location counts should be based off of those qualifying as “actual locations” at the time of certification.

### **B. Participants Should be Given Flexibility in Data Submissions**

With respect to the reliability and validity of the data the participants provide, USTelecom supports allowing a participant sufficient flexibility so long as it can explain its methodology. As the Notice states, “USAC has published guidance on three generally accepted methods of geolocation,”<sup>9</sup> that CAF II (non-auction) participants are already using to report CAF locations into the USAC HUBB.<sup>10</sup> While some methods may be slightly more precise than others, the Notice itself recognizes that they are all “generally accepted” methods so it is unclear what the basis for excluding any may be, particularly as “potential shortcomings of geolocation methods may be minimized through specific practices.”<sup>11</sup> As with defining an “actual location,” it would be unwise to create discordant acceptable geocoding methodologies amongst the CAF II programs. It is, however, reasonable and logical to request that any participant availing itself of this process provide a brief narrative of its methodology so that the Bureau and any challenging party can fully understand the methodology used and its potential

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<sup>9</sup> Notice at para. 11.

<sup>10</sup> See USAC, Geolocation Methods: A guide to successfully collecting broadband deployment data, <https://www.usac.org/res/documents/hc/pdf/tools/HUBBGeolocationMethods.pdf> (last visited Oct. 29, 2018).

<sup>11</sup> Notice at para. 11.

shortcomings.

The Bureau should not require participants to submit additional evidence beyond that which goes into the USAC-accepted methodology, particularly those which require a participant to “prove the negative.” The potential additional evidence the Notice suggests the Bureau could require (e.g., mileage receipts, photographic evidence) does not scale if a provider is making a statewide challenge and does not necessarily prove anything. Providers are not cartographers, and they should be allowed to reasonably rely upon desktop geolocation or automated address geocoding to meet at least their initial burden of persuasion. The challenge process contemplated in the Notice is designed as a solution should those processes produce inaccuracies; a challenge allows the provider to research disputes on a targeted basis.

One potential change that the Bureau should consider—not just for this proceeding but for all geocoding of CAF locations—is to require one less degree of accuracy than it currently does. As AT&T has stated, CAF reporting “requires lat/long coordinates to the sixth decimal place. According to USAC, this is an accuracy range of 4 inches! This requirement was never put out for public comment, so we do not know why this level of accuracy was considered necessary for rural areas where houses are more likely to be 50 feet to a mile apart than four inches.”<sup>12</sup> Five decimal places produces accuracy within three and a half feet—more than enough for determining a rural structure from another—and even that is considered difficult to provide accurately.<sup>13</sup> The Bureau should address this reporting requirement immediately.

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<sup>12</sup> Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Sept. 4, 2018) (footnote omitted).

<sup>13</sup> See Sarah Zang, *How Precise is One Degree of Longitude or Latitude?*, Gizmodo (Sept. 5, 2014) <https://gizmodo.com/how-precise-is-one-degree-of-longitude-or-latitude-1631241162> (“The fifth decimal place is worth up to 1.1 m: it distinguish trees from each other. Accuracy to this level with commercial GPS units can only be achieved with differential correction. The sixth decimal place is worth up to 0.11 m: you can use this for laying out structures in detail, for designing landscapes, building roads. . . . This can be achieved by taking painstaking measures with GPS, such as differentially corrected GPS.”).

### **C. The Bureau Should Allow Interested Stakeholders to Comment**

With respect to stakeholder responses, USTelecom believes that the “challenge” process should be open to state/local/Tribal authorities as well as comments from specific individuals so long as the stakeholder has a legitimate interest in the proceeding based upon either the geography they serve (for governmental stakeholders) or having a property interest in the relevant territory and thus, becoming a “potential customer.”<sup>14</sup> This strikes the right balance between an open process and ensuring that providers are not burdened with challenges from parties with no standing in the matter. Challenging stakeholders should be given latitude in their evidence production so long as they also submit an explanation of their methodology.

### **D. There Must Be Transparency if Adjudicating Based Upon the CAM**

To the extent that the Bureau makes use of the Connect America Model (CAM) in deciding that a provider has failed its burden of persuasion,<sup>15</sup> USTelecom urges the Bureau to allow participants to see the underlying data that the CAM uses to estimate the number of locations in a census block. While the CAM is a very good model in the aggregate, it uses “surrogates” to place millions of locations throughout rural areas—a much higher percentage than is found in other areas.<sup>16</sup> CenturyLink, a USTelecom member and substantial participant in the CAF program, has found within its service area that 75 percent of its serviceable locations have rooftop level geocoding accuracy. In CAF areas, that number drops to 55 percent, and in areas deemed too costly under the current CAF program (and even more likely to be unserved), correct geolocation information only exists for 43 percent of the territory. To

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<sup>14</sup> Notice at 13.

<sup>15</sup> Notice at para. 23.

<sup>16</sup> CostQuest Associates, Inc., Connect America Cost Model at 44 (2015), [https://transition.fcc.gov/wcb/Model%20MethodologyACAM1\\_1v5\\_Post.docx](https://transition.fcc.gov/wcb/Model%20MethodologyACAM1_1v5_Post.docx) (“CQLL then augments actual geocoded point data with surrogate locations for demand that cannot be located accurately. These surrogate locations are based upon generally accepted data sources (e.g., Census data), client-specific engineering and optimization rules, and standard industry practices.”).

the extent that providers are held to a standard that a location actually exists within a block according to the CAM, providers should at least be able to see where the CAM has estimated the locations in question exist in order to determine its veracity.

### **III. THE TECHNICAL PROCESS**

USTelecom largely agrees with the filing processes and procedures outlined in the Notice but provides comment on a few issues related to certifications, confidentiality, and the audit process.

With respect to the certification of the data, there should not be an ongoing requirement for participants to monitor and re-engineer their analysis, as the Notice suggests.<sup>17</sup> A well-researched and factual analysis takes time and will be supported by substantial evidence. Participants, particularly those with substantial commitments and scale in a state, are unable to continually perform follow-up sweeps to determine “what’s new?” The analysis and certification process is all occurring within the span of less than a year; building new structures takes time, there are unlikely to be dramatic differences between what exists at the time of analysis and afterwards. It would be unduly burdensome and unfair to hold participants to a standard that requires continual re-analysis.

Regarding the confidentiality of evidence, USTelecom recommends the Bureau provide flexibility to allow for business sensitive filings and also to protect the confidentiality of any personally identifiable information that may be submitted as evidence. A protective order would be an appropriate means of addressing these confidentiality concerns while allowing for a reasonably transparent process.

Finally, USTelecom believes the audit process is important but any audits should be limited in scope and must be timely. Any USAC audit should be conducted within 18 months

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<sup>17</sup> Notice at paras. 20-21.

of the provider's certification and be limited to an appropriate sample size to achieve their results. Audits beyond 18 months risks substantial movement in actual locations (both new locations being added but also some locations disappearing) such that it would be very difficult to prove the facts on the ground as of the moment in time at which the provider submitted its certification.

#### **IV. CONCLUSION**

USTelecom members support the Bureau's efforts to develop a just process for developing a process for when a CAF II Auction winner's obligations do not mesh with the real world. It can ensure a better process by adopting the modifications recommended above.

Respectfully submitted,

By:   
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